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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/679,371	10/05/2000	Thomas J. Mohr	SWAB:003B	7751

7590 09/10/2002

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 09/10/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

7C-14

Office Action Summary	Application No.	Applicant(s)	
	09/679,371	THOMAS J. MOHR	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/23/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-38 is/are pending in the application.
- 4a) Of the above claim(s) 29-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 23, 2002 has been entered.
2. This office action is in response to the amendment filed July 23, 2002 in which claims 32-34 were amended and claims 35-38 were added.
3. The substitute specification filed March 23, 2002 has not been entered because it does not conform to 37 CFR 1.125(b) because: the statement as to a lack of new matter under 37 CFR 1.125 (b) is missing. Therefore, the examiner has deleted page 13 and renumbered pages 14-20 as 13-19.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelenak (US 5,814,222).

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Zelenak teaches super oxygenated water containing 40-50 mg/l of oxygen (see col. 3, lines 22-30). The water is used in medical solutions, such as organ transplant storage media and contact lens treating solution (saline) (see col. 3, lines 31-41). Zelenak teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Zelenak differs from the claims in that he does not specifically teach that the oxygen of his invention is atomic oxygen. However, since Zelenak is silent regarding this limitations, it would be reasonable to expect that Zelenak's generic description of oxygen encompasses atomic oxygen.

In the second aspect, Zelenak differs from the claims in that he does not specifically teach that the water is prepared by the product-by-process limitation. However, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985).

6. Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over OXY-WATER.

OXY-WATER teaches super-oxygenated water containing 34 mg/l of dissolved oxygen (see testimonials-medical statements).

In the first aspect, OXY-WATER differs from the claims in that it does not specifically teach that the oxygen of his invention is atomic oxygen. However, since

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OXY-WATER is silent regarding this limitations, it would be reasonable to expect that OXY-WATER's generic description of oxygen encompasses atomic oxygen.

In the second aspect, OXY-WATER differs from the claims in that it does not specifically teach that the water is prepared by the product-by-process limitation.

However, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985).

7. Applicant's arguments filed have been fully considered but they are not persuasive.

8. Applicant argues that the references are describing superoxygenated water wherein O₂ is dissolved in the water and not atomic oxygen.

The prior art teaches water that is oxygenated with oxygen. Neither references differentiates between O₂ and O^{*}. The generic teaching of oxygen suggests and encompasses both forms of oxygen.

Applicant's data have been taken under consideration but the examiner's interpretation of the data is not the same as Applicant's. The data show that the O₂Sat is 99.9%. The examiner's interpretation of this stat is that there is only O₂ present and no atomic oxygen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Cephia D. Toomer
Primary Examiner
Art Unit 1714

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September 7, 2002